IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1864 of 2001
(Old No. 753 of 1999)

The State

…. Appellant

Versus

1. Sukha
2. Haneef

…. Respondents

Mr. G.S. Sandhu, learned A.G.A. for the State.
None for the respondents.

Hon. Prafulla C. Pant, J.

Heard on leave to appeal filed on behalf of the State under Section 378(3) of the Code of Criminal Procedure, 1973.

2) Impugned judgment and order shows that respondent No. 1 Sukha and respondent No. 2 Haneef were tried in the court of Judicial Magistrate, Roorkee, relating to offence punishable under Section 435 of I.P.C., police station Manglaur, District Haridwar. The trial court acquitted the accused persons on the ground that the prosecution could not prove the charge successfully beyond reasonable doubt. From the perusal of the judgment, it appears that P.W. 1 Sirajuddin, informant, whose sugarcane crop is said to have been set on fire, is not an eyewitness of the incident. The First Information Report is a delayed one. The two eyewitnesses examined by the prosecution were P.W. 2

Ashraf and P.W. 3 Ramjaani. The incident is of midnight. The trial court found presence of Ashraf and Ramjaani, at the place of incident, doubtful. It is also observed by the trial court that the eyewitnesses failed to explain as to how they were present in the midnight near the field of Sirajuddin, which was across the canal. Even if the two views can be said to be possible, it is not just and proper to interfere in such a situation in an appeal against acquittal.

3) In the above circumstances, the leave is refused. Accordingly, the appeal also stands dismissed.

(Prafulla C. Pant, J.)

Dt. October 13, 2006.
H.Negi